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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/630,377	Applicant(s) D'AMATO, GIANFRANCO	
	Examiner Christopher P. Bruenjes	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20031229, 20051028</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-26 and 30-43 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-33 of copending Application No. 10/630,378. Although the conflicting claims are not identical, they are not patentably distinct from each other because the

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claims of application '378 teach all that is claimed in the rejected claims of the pending application. Regarding claims 1 and 4-8, claim 1 of application '378 teaches a container having all of the limitations of claims 1 and 4-7 of the current application in combination. Claims 2 and 9-10 are taught by claims 13 and 31 of application '378. Claim 3 is taught by claim 12 of '378. Claim 8 is taught by claim 5 of '378. Claim 11 is taught by claim 16 of '378. Regarding claim 12, the limitation that the two or more layers are coextruded is a method limitation and therefore receives little patentable weight in an article claim, since the final product is a laminated structure which is taught by '378 in claim 16. Also it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to form the multilayered container of '378 by lamination and/or coextrusion since both methods are notoriously well-known methods in the art for forming multilayered containers and that the particular method chosen is selected based on the intended end result and intended processing of the article. Regarding claims 13-26, these limitations are taught in claims 2-4, 6-11, 14-15, and 17-19 of '378 respectively. Claims 30-31 are taught by claim 14 of '378. The limitations of claims 32-43 are taught by claims 21-30 and 32-33 of '378 respectively. Note the claims of the two

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applications are not conflicting because the independent claim of '378 requires that the container be collapsible and a specific combination of limitations in which the claims of '377 do not require even though the claims of '377 teach all of those limitations individually.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Priority

3. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on July 10, 2003. It is noted, however, that applicant has not filed a certified copy of the DE 20310622.9 application as required by 35 U.S.C. 119(b).

Drawings

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: reference number 13. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid

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abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

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6. The abstract of the disclosure is objected to because the abstract contains legal phraseology such as "comprises" and "comprising". Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the limitations "in particular" in lines 1, 8 and 10 render the claim vague and indefinite. It is not understood if the limitation following "in particular" is positively claimed. It is suggested that if the limitations following "in particular" are required limitations then "in particular" should be deleted from the claim. If the limitations are merely preferred embodiments then the limitations should be addressed in further dependent claims.

Regarding claims 2, 9, 10, the limitation "or the like" renders the claim vague and indefinite. It is not understood

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what the common characteristic between the claimed polymers that the layers are selected from is so that a determination of what "or the like" would include. Does "or the like" include any other polymeric material?

Regarding claim 6, the limitation "in particular" renders the claim vague and indefinite, because it is not understood if the limitation that the overlap region "extends in the longitudinal direction of the container" is a positive limitation in the claim.

Regarding claim 9, the limitations "(coextruded or lacquered)" and "(lacquered)" render the claim vague and indefinite. It is not understood what the limitations in parenthesis are meant to portray. Are these limitation of the polymer preceding the parenthesis, or are these merely descriptions of how those particular polymers could be manufactured?

Regarding claim 10, the limitation "the inner layer" lacks antecedent basis because there is no inner layer claimed in claim 1 for which to refer.

Regarding claim 13, the limitation "strictly two-dimensional" renders the claim vague and indefinite. This limitation appears to claim a certain degree of two-dimensionality. However, an object is either two-dimensional or

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not, there aren't different degrees of two-dimensionality. Furthermore, if the unshaped blank were "strictly" two-dimensional the blank would have no thickness and therefore, would not be able to be formed into a container.

Regarding claim 14, the limitation "mechanically resistant" renders the claim vague and indefinite. It is not understood what the material is resistant to, nor is clear what constitutes a mechanical resistance to something.

Regarding claim 15, the limitation "the two or more layers" lacks antecedent basis because claim 15 is dependent on claim one which only claims at least one layer and does not provide antecedent basis for two or more layers. Furthermore, the limitation "permanent perfect junction" renders the claim vague and indefinite because it is not understood what constitutes a "perfect" junction.

Regarding claim 16, the limitation "in particular" renders the claim vague and indefinite, because it is not understood if the limitation that the central layer itself is an elastic, yet permanently ductile and after the shaping dimensionally stable layer is a positive limitation in the claim.

Regarding claims 21-22, 24, 30-31, 34-37, the limitation "the print" lacks antecedent basis because all of these claims

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are dependent on only claim 1, which does not provide any basis for printing on the container.

Regarding claim 22, the limitations "the outer layer", "the central layer" and "the inner layer" lack antecedent basis because claim 22 is dependent on claim 1, which does not provide any basis for inner, outer, and central layers.

Regarding claim 25, the limitation that "at least one of the layers is a laminate" renders the claim vague and indefinite because the definition of laminate requires more than one layer, and it is not understood how one layer is defined as a structure containing more than one layer.

Regarding claim 28, the limitation "the bottom insert" lacks antecedent basis because claim 28 is dependent on claim 1, which does not provide any basis for a bottom insert.

Regarding claim 31, the limitation "PE-based material" renders the claim vague and indefinite because it is not understood if the limitation requires that all the layers are PE-based, or if PE is required to make up a majority of the multilayer structure and therefore could be in only one layer or what exactly the limitation is claiming.

Regarding claim 33, the limitations "approximately quadrangular", "approximately polygonal", and "in particular square" render the claim vague and indefinite. First, it is not

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understood how a container can be "approximately" a shape such as quadrangular or polygonal. Second, it is not understood if "square is being positively claimed or not.

Regarding claim 36, the limitation "the print leaves open a control window on the wall", it is not understood how a print "leaves open a control window". Is this a process limitation?

Regarding claim 37, the limitation "only visible after the food has been taken out at least partially" renders the claim vague and indefinite, because it is not understood what the food is removed from.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1, 3-7, 13-14, 18-19, 26-28, 32-33, 38-41, and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Benson (USPN 1,654,318).

Regarding claim 1, Benson anticipates a container such as a paper drinking cup, which is for receiving food (see title of

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invention). The container has a wall comprising at least one layer (reference number 1, Figure 4). The container comprises a withdrawal opening with a bent opening edge (reference number 3, Figure 4) and being closed at its end opposite the withdrawal opening (reference number 4, Figure 4). The container wall is formed from a two-dimensional blank which is connected with itself for forming a continuous container wall (p.1, lines 92-99). The container wall is at least partially formed from a transparent material (p.1, lines 49-55). The material is liquid or fluid tight since it is used to contain a liquid material. The material is shaped for forming the container at both ends (Figure 4) and is dimensionally stable after having been shaped, because the container retains its shape after being shaped. Regarding claim 3, a coat of lacquer is provided on one or both sides of the layer (p.2, lines 18-21). Regarding claim 4, the container is made of paper stock to form a drinking cup from an unshaped blank, therefore the container wall is inherently flexible. Regarding claim 5, the connection of the blank with itself is prepared by heat and/or pressure because the edges glued together are brought together with some amount of pressure in order to allow the glue to bond. Regarding claim 6, the connection of the blank with itself is formed along an overlap region extending in the longitudinal direction of the container

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(reference number S, Figure 1). Regarding claim 7, the opening edge is bent or rolled without the material changing its properties, since the material is still paper stock and transparent. Regarding claim 13, the unshaped blank is strictly two-dimensional in that it is two-dimensional (p.1, lines 21-99). Regarding claim 14, the material forming the container is paper stock, which is at least partially mechanically resistant to puncturing, so it is mechanically resistant, as claimed. Regarding claim 18, the layer taught in Benson, which would be an inner layer and/or outer layer of the container when the container is formed of one layer, is formed as a connection layer at least in the overlap region (Figure 1). Regarding claim 19, the edges of the layer are fluid tight, since the container is used to contain liquids. Regarding claim 26, the closed end of the container is formed by connecting lower end sections of the wall via the bottom insert. Note the fact that even though the connecting of the lower end sections requires the bottom insert, the lower end sections are still connected to form the closed end. Regarding claims 27-28, the closed end comprises a bottom insert (reference number 4, Figure 4) formed from the same stock as the sidewall, therefore, the bottom insert is transparent. Regarding claim 32, paper stock formed into a paper cup inherently has some impact and/or puncture

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resistance. Note the claim does not specify an amount of impact and/or puncture resistance. Regarding claim 33, the container has a circular cross-section (Figure 3). Regarding claim 38, the opening edge is bent to the outside at an angle much greater than 90° to the rest of the container wall (reference number 3, Figure 4). Regarding claim 39, the opening is partially and/or in places continuously formed (p.1, lines 59-62). Regarding claim 40, the container is stable at least in the temperature range of -50°C to +120°C, since the container is formed of paper stock for the purpose of forming a drinking cup. Regarding claim 41, the container can be stack and unstacked (p.1, lines 59-62). Regarding claim 43, a blank is taught for the manufacture of a container according to claim 1 (p.1, lines 91-99).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claims 2, 8-12, 15-16, 23, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benson in view of Suzuki (USPN 4,187,768).

Regarding claims 2 and 9-10, Benson teaches all that is claimed in claim 1, but fails to teach forming the container wall from more than one layer or using polymeric material to form one or more of those additional layers. However, Suzuki teaches that thermoplastic films such as polyethylene, polypropylene or the like are added to the inner and/or outer wall surfaces of paper drinking cups in order to render the paper container water-resistant (see abstract and col.1, 1.22-26). One of ordinary skill in the art would have recognized that thermoplastic films such as polyethylene, polypropylene, or the like are added to the inner and outer surfaces of a

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traditional paper drinking cup in order to improve the water resistance of the container, as taught by Suzuki.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add a inner and outer layer of polyethylene, polypropylene, or the like to the paper drinking cup of Benson, in order to improve the water resistance of the cup, as taught by Suzuki.

Regarding claim 8, note that polyethylene and polypropylene films are transparent films, therefore the wall would comprise two or more layers, each being transparent.

Regarding claims 11, 15, and 25, the container taught by the combination of Benson and Suzuki includes three layers that are laminated and would therefore form a permanent perfect junction.

Regarding claim 12, the limitation that the layers are coextruded is given little patentable weight in an article claim because the layers would have the same structure in that they would be laminated layers regardless of whether co extrusion was used to form the lamination. Furthermore, it is well known in the art to form multi layered containers using coextrusion.

Regarding claim 16, the container taught by the combination of Benson and Suzuki includes the paper stock layer of Benson as

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the central layer. Paper stock has some elastic properties and is permanently ductile and dimensionally stable after shaping.

Regarding claim 23, Suzuki goes on to teach that polyethylene and polypropylene are ultrasonic absorbent and therefore the overlap region can be formed by ultrasonic welding the edges of the blank together (col.3, 1.23-32).

14. Claims 17, 20-22, 24, and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benson in view of Suzuki and further in view of McLaughlin (USPN 6,210,766).

Benson and Suzuki teach a three layered blank having a polyethylene or polypropylene inner and outer layer and a central transparent paper stock layer as shown above with regards to claims 2, 8-12, 15-16, 23, and 25, but fail to teach at least one of the layers is gas tight. However, McLaughlin teaches that it is well known in the art to add vinyl alcohol layer, which renders a container gas tight, depending on the intended end result of the container (col.2, 1.41-50). One of ordinary skill in the art would have recognized that Benson, Suzuki and McLaughlin are analogous insofar as all three references are concerned with forming a container from a two-dimensional blank. It would have been obvious to one having ordinary skill in the art to add a gas tight layer to a fluid

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containing container formed from a two-dimensional blank depending on the intended end properties of the container.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add a gas tight layer to the container of Benson and Suzuki in order to provide the container with gas tight properties, which is a well known desire in forming containers from two-dimensional blanks, as taught by McLaughlin.

Regarding claims 20, 22, and 34-35, Benson and Suzuki teach a three layered blank having a polyethylene or polypropylene inner and outer layer and a central transparent paper stock layer as shown above with regards to claims 2, 8-12, 15-16, 23, and 25, but fail to teach providing at least one of the layers with a print. However, McLaughlin teaches for providing a container with decoration and information for the user printing, especially in the form of a hologram or three dimensional effects is printed on one of the inner layers of the laminate. One of ordinary skill in the art would have recognized that Benson, Suzuki and McLaughlin are analogous insofar as all three references are concerned with forming a container from a two-dimensional blank. It would have been obvious to one having ordinary skill in the art to provide a container with printing in the form of a hologram or three dimensional effects in order

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to provide that container with decoration and/or information for the user of the container.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add printing such as a hologram or three dimensional effects to one of the inner layers of the container of Benson and Suzuki in order to provide the container with decoration and/or information for the user of the container, as taught by McLaughlin.

Regarding claim 21, because the print is present on an interior layer of the container the print is obviously resistant to rubbing.

Regarding claim 24, because the print is present on an interior layer of the container the print is obviously printed before the layers are laminated.

Regarding claim 36, the printing does not cover the entire side wall of the container, so therefore, the part of the sidewall not possessing the printing would be a control window left open on the wall for viewing the inside of the container.

15. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benson in view of Meyer (USPN 2,170,060).

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Benson teaches all that is claimed in claim 1 as shown above but fails to teach that the material forming the container sidewall is not only transparent but also colored. However, Meyer teaches that is well known in the art to add color effects to at least the borders and edges of transparent containers in order to provide an enhanced decorative appeal to the transparent container (p.1, left hand column, lines 1-16). One of ordinary skill in the art would have recognized that Benson and Meyer are analogous insofar as both references are concerned with forming transparent containers from two-dimensional blanks. Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add color effects to at least the borders and edges of transparent containers formed from two dimensional blanks in order to provide an enhanced decorative appeal to the container, as taught by Meyer.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add color to the transparent container of Benson in order to enhance the decorative appeal of the container, as taught by Meyer.

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16. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benson in view of Flood (USPN 2,226,340).

Benson teaches all that is claimed in claim 1 as shown above, but fail to teach printing on the outer side of the container. However, Flood teaches that it is well known in the art to print on the outer surface of a paper container in order to provide the user of the container with information such as scale means (p.1, left hand column, lines 10-34). One of ordinary skill in the art would have recognized that Benson and Flood are analogous insofar as both references are concerned with forming paper containers having a sidewall in which the contents of the container can be seen through. Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add printing to the outside surface of paper containers having a sidewall in which the contents of the container can be seen through in order to provide information to the user of the container such as scale mean, as taught by Flood.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add printing to the outsider surface of the container of Benson in order to provide information to the user of the container, as taught by Flood.

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17. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benson in view of Suzuki and in further view of Flood (USPN 2,226,340).

Benson and Suzuki teach a three layered blank having a polyethylene or polypropylene inner and outer layer and a central transparent paper stock layer as shown above with regards to claims 2, 8-12, 15-16, 23, and 25. Note since the container comprises an inner and outer layer of polyethylene the container is formed of a multilayer, PE-based material. Benson and Suzuki fail to teach printing on the outer side of the container. However, Flood teaches that it is well known in the art to print on the outer surface of a paper container in order to provide the user of the container with information such as scale means (p.1, left hand column, lines 10-34). One of ordinary skill in the art would have recognized that Benson, Suzuki and Flood are analogous insofar as the references are concerned with forming paper containers. Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add printing to the outside surface of paper containers in order to provide information to the user of the container such as scale mean, as taught by Flood.

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Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add printing to the outside surface of the container of Benson and Suzuki in order to provide information to the user of the container, as taught by Flood.

18. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benson in view of Clagett (USPN 2,689,424).

Benson teaches all that is claimed in claim 1 as shown above, but fail to teach that printing is applied to the container so that it is only visible after the food has been at least partially taken out of the container. However, Clagett teaches a drinking container in which two images are created in different colors so that one image is present when the beverage is present and the other image is present when the beverage is no present in order to provide a unique aesthetic appeal to the beverage container (col.1, lines 1-29). One of the prints of Clagett is only visible after the food has been taken out of the container (col.2, 1.32-49). One of ordinary skill in the art would have recognized that Benson and Clagett are analogous insofar as both references are concerned with forming drinking containers having a sidewall in which the contents of the container can be seen through. Therefore, it would have been

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obvious to one having ordinary skill in the art at the time Applicant's invention was made to add printing that is only visible after food is removed from the container in order to provide a unique aesthetic appeal to the drinking container, as taught by Clagett.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add printing that is only visible after food is removed from the container of Benson in order to provide a unique aesthetic appeal to the drinking container, as taught by Clagett.

19. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benson in view of Halligan et al (USPN 4,574,987).

Benson teaches all that is claimed in claim 1 as shown above, but fail to teach forming at least one of the layers of the container as a heat insulating layer. However, Halligan et al teach that paper containers are formed with a heat insulating layer such as a layer of air (col.3, 1.42-47) so that the container can be used to package food that is desired to remain colder or warmer than room temperature or the temperature at the surface of a person's hand (col.1, 1.5-24). One of ordinary skill in the art would have recognized that Benson and Halligan

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et al are analogous insofar as both references are concerned with forming paper containers for receiving food. Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add a heat insulating layer to a paper container for receiving food in order to provide insulation between a food that is desired to remain colder or warmer than room temperature and/or the temperature at the surface of a person's hand, as taught by Halligan et al.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add a heat insulating layer to the container of Benson in order to provide the container with the ability to be used to contain food that is desired to remain at a colder or warmer temperature than the outside environment, as taught by Halligan et al.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kingsbury (USPN 1,759,407); Goldman (USPN 3,747,830); Reifsnyder et al (USPN 2,721,686); Amberg (USPN 2,240,599); McGirr et al (USPN 2,235,963); Brkovic et al (USPN 5,954,217).

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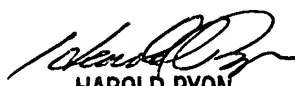
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Christopher P Bruenjes
Examiner
Art Unit 1772

CPB *cfB*
February 2, 2006


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SUPERVISORY PATENT EXAMINER
1772

2/3/06